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10/045,303	10/29/2001	James H. Stephens JR.	263550US8	1293
22850 7590 09/18/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER SHAW, PELING ANDY				
ART UNIT 2444		PAPER NUMBER		
NOTIFICATION DATE 09/18/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JAMES H. STEPHENS JR.

Application No. 10/045,303
Technology Center 2400

Mailed: September 18, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 10, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed March 5, 2009, under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the Final Rejection.

There are inconsistencies with the rejections of claims 3, 7-10, 15, and 17-19 under 35 USC § 103(a) between the Final Rejection and the Examiner's Answer.

A review of the file finds inconsistencies are set forth below:

Final Rejection, mailed May 12, 2008: Grounds of Rejection list claims 3, 7-10, 15, and 17-19 as rejected under 35 USC § 103(a) as unpatentable over Natarajan, Weisman and in further view of Evans (US 5694524).

Examiner's Answer, mailed on March 5, 2009: claims 3, 7-10, 15, and 17-19 are omitted from the Grounds of Rejection. The rejection does not appear to have been withdrawn, but neither was it restated from the Final Rejection. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the Final Rejection. Each grounds of rejection to be reviewed on appeal must be identified and any withdrawn rejection must be provided under a separate heading.

Clarification and correction is required regarding the rejection of Claims 3, 7-10, 15, and 17-19. Additionally, the Examiner's Answer's Evidence Relied Upon must be corrected to include the Evans reference.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) vacate the Examiner's Answer and issue either

a) a Substitute Examiner's Answer to correct the headings: "Grounds of Rejection to be Reviewed on Appeal," "Arguments," "Evidence Relied Upon" sections and to correct other sections of the Answer as may be required;
or

b) alternatively, if appropriate, issue a Supplemental Examiner's Answer and include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05; and

2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

Application No. 10/045,303

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